



INTERIOR BOARD OF INDIAN APPEALS

WELSA Heirship Determination of Leon M. Van Wert

30 IBIA 177 (01/15/1997)

Reconsideration denied:
30 IBIA 266



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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WELSA HEIRSHIP DETERMINATION : Order Affirming Decision
OF LEON M. VAN WERT :
: Docket No. IBIA 97-13
:
: January 15, 1997

Appellant Charlene Van Wert seeks review of a September 17, 1996, order determining the heirs of Leon M. Van Wert (decendent). The order was issued by Administrative Judge Sandra L. Massetto under the White Earth Reservation Land Settlement Act of 1985, 25 U.S.C. § 331 note (1994) (WELSA). For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

Judge Massetto determined decendent's heirs to be Beverly Susan Van Wert, Jean C. Van Wert Sutton, and Leon Martin Van Wert (Leon). She further found that Leon died after decendent but before the entry of her order determining decendent's heirs. Accordingly, she stated that it might be necessary to hold further proceedings to determine Leon's heirs.

In her notice of appeal, appellant stated:

I am willing to do DNA testing and to go to court to prove that I am the daughter of [decendent]. If Jean Claire Sutton, Beverly Swan Van Wert, and I * * * have the same blood type, that would prove that I am his legal daughter, therefore, I am asking the judge to request blood testing of the surviving Van Wert children to prove this issue.

I am requesting an extension of [time] to get notarized statements from members of the Swan and Van Wert family swearing that I am truthfully [decendent's] daughter. This time frame will also allow us to get the blood testing done.

In an October 23, 1996, order the Board stated that it lacked authority to order individuals to submit to either DNA or blood testing. However, it gave Jean and Beverly until November 15, 1996, to inform it whether they would voluntarily agree to DNA or blood testing. The Board stated that failure to respond to the order would be deemed lack of consent to testing. The Board has not received a response from either Jean or Beverly. Therefore, it concludes that neither individual agrees to submit to DNA or blood testing.

The Board also noted at page 1 of the October 23 order that

in concluding that the evidence did not support a finding that decendent was appellant's father, Judge Massetto found "most compelling" appellant's mother's admission that she had only two

children [with decedent], Jean * * * and Leon * * *. Besides listing Lawrence J. Swan as appellant's father on her birth certificate and in her tribal enrollment papers, appellant's mother did not name appellant as decedent's child when she filed for divorce from decedent, even though appellant was 14 years old at the time.

The Board advised appellant that "[a] mother's representations concerning the fact that a particular man was not the father of her child are given great weight in determining paternity. Therefore, unless Jean * * * and/or Beverly * * * agree to submit to either DNA or blood testing, there is little likelihood that appellant will prevail in this appeal." Order at 2. However, the Board gave appellant until December 13, 1996, in which to provide any additional evidence she might have concerning paternity. Appellant has not responded.

Because neither Jean nor Beverly have agreed to submit to DNA or blood testing, and because appellant has not submitted any additional evidence of paternity, there is no basis for the Board to disturb Judge Massetto's heirship determination.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, Administrative Judge Massetto's September 17, 1996, order determining heirs is affirmed.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge